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Kenyon & Kenyon  
One Broadway  
New York, NY 10004

In re Application of :  
LINDQUIST :  
Application No.: 09/868,417 : DECISION  
PCT No.: PCT/AU99/01128 :  
Int. Filing Date: 17 December 1999 :  
Priority Date: 17 December 1998 :  
Attorney's Docket No.: 12143/1 :  
For: LOCAL AND REMOTE MONITORING :  
USING A STANDARD WEB BROWSER :

This notification is in response to applicant's "STATEMENT UNDER 35 U.S.C. § 21(a) AND 37 C.F.R. § 1.6(e)" and "SMALL ENTITY STATEMENT AND REQUEST FOR REFUND" filed 28 September 2001.

### **BACKGROUND**

On 17 December 1999, applicants filed international application PCT/AU99/01128, which claimed a priority date of 17 December 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 22 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 July 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 June 2001 (17 June 2001 being a Sunday).

On 15 June 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 23 July 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 28 September 2001, applicants submitted a "SMALL ENTITY STATEMENT AND REQUEST FOR REFUND" and a "STATEMENT UNDER 35 U.S.C. § 21(a) AND 37 C.F.R. § 1.6(e)".

## DISCUSSION

### 37 CFR 1.6(e)

In the "STATEMENT UNDER 35 U.S.C. § 21(a) AND 37 C.F.R. § 1.6(e)", applicants request that the papers filed 28 September 2001 be accorded a receipt date of 15 September 2001 because of the interruption in the service of the U.S. Postal Service in the borough of Manhattan.

On 13 September 2001, the USPTO designated the interruption in the service of the USPS in the borough of Manhattan as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a).

37 CFR 1.6(e) provides:

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency; and
- (2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

Applicants have stated that the service of the USPS was interrupted in the area covering the office of Kenyon & Kenyon located at One Broadway in the borough of Manhattan on 15 September 2001. (See also the attached USPS Mail Service Update.) Thus, it has been established that applicants were subject to a designated postal service interruption and emergency on 15 September 2001. Applicants indicate that the above-identified application would have been filed on 15 September 2001 if not for the designated interruption of emergency in the United States Postal Service. Also, the above-identified papers were filed promptly after the ending of the designated interruption or emergency. Accordingly, the request that the papers be accorded a receipt date of 15 September 2001 is granted.

### Request for Refund

A refund pursuant to 37 CFR 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under 37 CFR 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. 37 CFR 1.28(a). Here, an assertion of small entity status under 37 CFR 1.27(c) and a request for refund of the excess amount have been filed within three months of the timely payment of the full fee. Accordingly, Deposit Account 11-0600 will be credited \$500.

**CONCLUSION**

For the reasons set forth above, the "SMALL ENTITY STATEMENT AND REQUEST FOR REFUND" has been accorded a receipt date of 15 September 2001 in accordance with 37 CFR 1.6(e).

For the reasons set forth above, the request for refund under 37 CFR 1.26 is GRANTED.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.



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Enclosure: USPS Mail Service Update dated 20 September 2001